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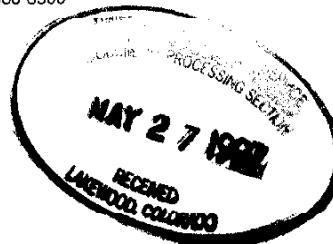
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Via Overnight Delivery
May 23, 1997

Minerals Management Service
Royalty Management Program, Rules and Publications Staff
MS 3101, Building 85
Denver Federal Center, Room A-212
Denver, CO 80225-0155



RE: Department of Interior, Minerals Management Service
Notice of Proposed Rulemaking (62 F. R. 3742, January 24, 1997)
Establishing Oil Value for Royalty due on Federal Leases, and on
Sale of Federal Royalty Oil

Gentlemen:

BP Exploration & Oil Inc., on behalf of itself and its BP Exploration (Alaska) Inc. and BP America Inc. affiliates (collectively "BP"), appreciates the opportunity to submit comments to the Minerals Management Service's ("MMS") January 24, 1997, Notice of Proposed Rulemaking Establishing Oil Value for Royalty due on Federal Leases, and on Sale of Federal Royalty Oil ("Notice").

BP's comments appear below in two parts: in Part One BP provides comments regarding issues raised by the Notice of particular concern to BP, and in Part Two BP responds to specific inquiries made by the MMS in the Notice.

(Please note: all underlining of quoted text appearing below has been added, and all references to Federal regulations, existing and proposed, unless otherwise noted, pertain to 30 C.F.R. Parts 206 and 208.)

Part One - Issues of Particular Concern to BP

(1) MMS Assumptions Used to Justify Proposed Rule are Questionable and Unsupported

BP questions the validity of various assumptions made by the MMS in the Notice which provide justification for its proposal, *inter alia*:

- "The intent was to decrease reliance on oil posted prices and to develop valuation rules that better reflect market value" at 62 F. R. 3742;
- "Because of the frequency of oil exchange agreements, reciprocal deals between crude oil buyers and sellers, and other factors where the real consideration for the transaction could be hidden, arm's-length contract prices would be used as royalty value only by producers who do not also purchase crude oil" at 62 F. R. 3742;

- "...multiple dealings between the same participants, while apparently at arms-length, may be suspect concerning the contractual price terms. Just as with exchange agreements, a producer may have less incentive to capture full market value in its sales contracts if it knows it will have reciprocal dealings where it may be able to buy oil at less than market value" at 62 F. R. 3743; and
- "Moreover, the widespread use of exchange agreements and reciprocal sales as well as difficulties with relying on posted price, cast additional doubt on the usefulness of many apparent arm's-length sales prices as a good measure of market value" at 62 F. R. 3744.

These assumptions are based on consultations conducted by the MMS with a number of sources for which no supporting information was provided in the Notice. In addition, the response to date to the Freedom of Information Act request filed by API and other trade associations seeking additional information regarding these underlying assumptions has been incomplete. BP believes that a better understanding and analysis of these underlying assumptions is needed in order to properly evaluate MMS' proposal, and we would recommend either that the comment period be further extended so that this analysis can be undertaken or that the MMS publish a new proposal which clearly identifies the source and basis of its assumptions

(2) *Gross Proceeds from Arms-Length Sales are the Best Indicator of Market Value*

It is BP's view that the best indicator of market value is the gross proceeds received in arms-length sales. We have reviewed the index pricing method proposed by the MMS and believe it is a more complex and less accurate method of determining market value than a method based on gross proceeds.

BP believes that a royalty valuation methodology which at times equals and often closely approximates the market value of the oil can be developed along the lines proposed by the MMS using an index pricing method based on NYMEX quotes or ANS spot prices; however, we believe the MMS's proposed index pricing method will consistently over or under value a small population of crude oils, with overvaluation occasionally in excess of \$5/bbl. Modifications necessary to eliminate or minimize over and under valuation in the index pricing method will require a large expenditure of resources by both the lessee and the MMS. Specifically, case-by-case reviews of valuation for crude oil whose quality and/or location differences are not adequately adjusted by the mechanisms described in the proposed index pricing method will be necessary. This process will demand a significant time commitment by both (i) the MMS in providing staff qualified to review complex crude oil pricing environments, and (ii) the lessee in providing support to the MMS for its review of the appropriate adjustments. For these reasons, BP believes the MMS should reconsider its proposed rules, and look to a simpler and more accurate valuation method, such as one based on gross proceeds.

BP opposes the proposed limitation in 206.102 (a)(6) at 62 F. R. 3753 that would require the majority of lessees to value royalties according to the proposed indexing provisions rather than on gross proceeds from arms-length sales if the lessee or any of its affiliates purchased any crude oil from any unaffiliated third party in the United States for two years preceding the production month for which the royalties are payable. If the MMS decides to implement an index pricing method for royalty valuation, BP recommends

that the index pricing method be applied only in a limited number of cases. BP recommends that a more accurate and simpler gross proceeds method be used for royalty valuation on all volumes sold through arms-length sales. For oil not sold through arm's length sales, the NYMEX or ANS based valuation methodology proposed by the MMS, with modification as described in this letter, could be an acceptable estimate of market value although case-by-case modifications may still be required.

(3) *Market Value Should be Determined at the Lease*

Royalties payable on federal leases historically have been valued at the lease. Under MMS' proposal, royalty value in most cases would be based on either NYMEX futures prices or ANS spot prices with adjustments for location/quality differentials and transportation allowances. The MMS would allow differentials reflecting the difference in the quality/location of oil between (i) the index pricing point and the market center and (ii) the aggregation point and the market center. The proposed rules do not allow for differentials reflecting the difference in quality of oil between the lease and the aggregation point that can and currently do exist outside of a tariff structure. Oil from different leases, which at times have vastly different qualities, often enter common pipeline systems for delivery to a common aggregation point. For example, in the Gulf of Mexico, production from one field may be commingled with other offshore production at an aggregation point to be marketed as HLS (Heavy Louisiana Sweet) at a market center. Quality bank adjustments are invoiced/credited by the quality bank operator to the producers for the respective qualities of their commingled oil. This adjustment represents the quality of the oil being produced at the lease. Without allowing for these quality bank adjustments, producers and the MMS will either be unfairly penalized or rewarded with regard to the royalties paid for a quality of oil different than that produced at the lease. BP strongly urges that any proposed methodology include adjustments which reflect the difference between the average production stream quality at the aggregation point versus the quality of the production attributable to a specific lease.

In addition, BP believes it may be inappropriate, under proposed 206.105 (c)(2)(ii), to assign value to production delivered from a lease to an alternate disposal site on the basis of value at the nearest market center, which may be many hundreds of miles away (or thousands of miles away in the case of Alaskan oil). For example, the value of federal oil produced on the North Slope of Alaska and sold in Alaska would be based on the price of ANS sold in California adjusted for transportation from the lease to the Alaskan customer. This method can result in an over-valuation in excess of \$5/bbl. Similarly, Alaskan oil sold in the Far East, Mid-Continent of the United States, Puget Sound, and the Gulf Coast are not appropriately valued under the proposed rules. BP strongly suggests that such situations be handled on a case-by-case basis rather than applying a mechanical approach that is likely to yield results that do not reflect market value at the lease. It should be noted that the requisite case-by-case reviews of valuation for crude oil whose quality and/or location differences are not adequately adjusted by the mechanisms described in the proposed index pricing method will require a large and highly trained staff within the MMS. If the MMS cannot dedicate skilled staff to this activity, they should revise their rules to a simpler approach, such as a method based on gross proceeds as earlier suggested.

(4) *Disallowance of FERC or State Approved Tariffs is Inappropriate and Unjustified*

The proposal to delete existing 206.105 (b)(5) at 62 F. R. 3746 is based on an erroneous interpretation of *Oxy Pipeline Inc.*, 61 FERC ¶ 61,051 (1992) and *Bonito Pipe Line Company*, 61 FERC ¶ 61,050 (1992). MMS incorrectly interprets these decisions as making it no longer viable to rely on FERC tariffs because FERC does not have Interstate Commerce Act jurisdiction with respect to pipelines located wholly on the Outer Continental Shelf. As the MMS itself stated, however, in *Torch Operating Company*, MMS-94-0655-OCS, the determinations in *Oxy* and *Bonito* "cannot be used as a blanket determination for all production being transported on all OCS pipelines." Accordingly, FERC tariffs will properly apply in many cases and the exemption afforded by 206.105 (b)(5) should remain available to allow the use of FERC tariffs in computing non-arm's length transportation allowances.

Should the MMS modify or limit the use of the FERC tariffs in computing non-arm's length transportation allowances, then the MMS must also amend existing 206.105 (b)(2) to include as "actual costs for transportation" the "reasonable profits on pipeline operations." Under the current regulations, allowable costs only include operating and maintenance expenses, overhead, and either depreciation and a rate of return on undepreciated capital investment or a return on the initial capital investment. It is unfair and discriminatory to deprive affiliated pipelines the ability to obtain a reasonable profit on operations for fully depreciated pipelines. Unless 206.105 (b)(2) is amended, an inconsistency will arise if 206.105 (b)(5) is deleted. For example, in the case of a fully depreciated pipeline used to transport crude oil from a field in the OCS Gulf of Mexico to an onshore aggregation point where there are two producer-lessees, the first producer-lessee, whose affiliate owns the pipeline, will not be able to deduct the reasonable profits of the pipeline in calculating actual transportation costs and will as a result pay a higher royalty. On the other hand, the second producer-lessee, who owns no interest in the pipeline, will be able to deduct as its actual transportation costs the FERC tariff rate that it pays, which does reflect a reasonable return to the pipeline owner, with the result that it will pay a lower royalty. In this case, the MMS proposal would result in the payment of royalties at two different rates on the same production stream from the same field transported through the same pipeline to the same aggregation point.

BP's concern about the lack of a reasonable rate of return for transportation systems provided by a producer's affiliates extends beyond pipeline assets. BP currently uses a large fleet of dedicated Jones Act tankers to transport ANS from Valdez to its customers in the United States and the Far East. It is imperative that the MMS fairly recognize the full costs associated with providing a transportation infrastructure, including a reasonable market-based rate of return on these capital intensive investments. Rules that do not recognize these costs can serve as disincentives to development in high cost, high risk lease areas.

(5) *Disallowance of Actual and Theoretical Losses is Inappropriate and Unjustified*

The proposal in 206.105 (g) to disallow costs for oil transportation that result from payments (either volumetric or for value) for actual or theoretical losses results in an over-valuation for federal royalty payments. Transportation losses are unavoidable and legitimate costs related to the movement of oil from the lease to the customer. For example, in Alaska, crude oil is typically moved from the lease to field pipelines to the

TransAlaska Pipeline System (TAPS) to tankers to the customer's refinery gate. If BP moves its oil to a Mid-Continent customer, the oil will further move from the tanker to a West Coast terminal to a series of pipelines through California and the Western States to terminals in the Mid-Continent to our customer's refinery. In a transportation system as complex as this, small oil losses are inevitable.. Crude loss allowances are another common source of crude oil losses. Crude loss allowances occur when a pipeline, such as the ones that move ANS to the Mid-Continent, takes a small percentage of the oil tendered to the pipeline to cover the pipeline owners' inevitable losses. A third source of crude oil loss occurs when a pipeline has the ability to take crude oil for operational purposes. In Alaska, for example, several of the TAPS pump stations have topping plants which are capable of refining turbine fuel from the passing crude stream. The turbine fuel is used to power the pumping units.

The costs related to the losses discussed above are all real and unavoidable costs of transportation to move the oil from the lease to the customer. They should be reflected in the valuation of the oil for payment of royalties.

- (6) *Disallowance of Costs for Value-Added Activities Between the Lease and the Market Center is Inappropriate and Unjustified*

The MMS's proposed rules, as currently written, do not appear to recognize and allow for costs associated with the value-added activities provided by the lessee between the lease and the market center. These include activities such as the aggregation of crude volumes into marketable volumes, optimization of transportation logistics, and the scheduling of pipeline space. In addition, BP concurs with API's comments that although producers have a duty to place production in marketable condition, they do not have an obligation to market that production at no cost to the government as suggested by the MMS at 62 F. R. 3746.

Part Two - BP Comments in Response to Specific MMS Inquiries

- General Description of the Proposed Rules: 62 F. R. 3743

- (1) *The MMS may publish an Interim Final Rule while it further evaluates the methodology in this proposed rule. This approach would provide the flexibility to do a revision after the first year without a new rulemaking. The MMS requests comments on this approach to implementing the new oil valuation regulations.*

Comment:

The MMS proposal represents a substantial change in current practices and, if adopted, will have far-reaching impacts not only on the majority of producers but on the operations of the MMS. BP believes that the proposed rule requires further analysis before it is implemented, and we see no compelling reason or justification why the MMS should publish an Interim Final Rule before it further evaluates the methodology in the proposed rule. Further, BP would object to the additional costs and administrative burden that would likely result from changing the rules again when the interim rules are discarded and final rules are adopted.

- (2) *During the first six months after the effective date of this rule, the MMS will verify that the values determined under the rule are replicating actual market prices. The MMS requests comments on how best to perform this analysis.*

Comment:

As stated throughout, BP believes that gross proceeds received in arm's-length sales is the best indicator of market value. To verify that the values determined under the rules replicate actual market prices, it would be essential for the MMS to compare the calculated value against gross proceeds received in arm's length sales for similar oil. This verification process would unreasonably increase the burden on lessees because gross proceeds would need to be reported in addition to the reporting requirements in connection with the MMS index pricing method valuation.

BP believes that six months would be too early to perform the verification analysis as there will inevitably be startup delays in receiving, analyzing and publishing data to support the analysis. Additionally, seasonality can play an important role in determining the relative value of crude oils. Seasonality occurs when the relative values of crude oils change over the year. For example, crude oils which yield high proportions of gasoline will have a higher relative value during the U.S. summer driving months to crude oils which yield lower proportions of gasoline. An evaluation performed in six months would not take into account the seasonal factor in verifying the values derived under the proposed rules against actual market prices.

- Section 206.102 (a); 62 F. R. 3743

- (3) *Under an alternative proposal, MMS would accept an arm's-length contract price paid by a purchaser or its affiliate as value unless during the two years preceding the production month the purchaser or its affiliate bought oil, gas or any other goods or services from that same purchaser. The MMS requests comments to address this alternative proposal and its concerns about the difficulty of application.*

Comment:

As stated throughout, BP believes that the best indicator of market value is the gross proceeds received in arms-length sales. We have reviewed the index pricing method proposed by the MMS and believe it is a more complex and less accurate method of determining market value than a method based on gross proceeds. If the MMS decides to implement an index pricing method for royalty valuation, BP recommends that the index pricing method be applied only in a limited number of cases. BP recommends that a more accurate and simpler gross proceeds method be used for royalty valuation on all volumes sold through arms-length sales. The MMS could require companies to certify that volumes valued on a gross proceeds basis were sold through arm's length sales, with no terms tied to other company or affiliate transactions. For oil not sold through arm's length sales, the NYMEX or ANS based royalty method proposed by the MMS, with modification as described in this letter, could be an acceptable estimate of market value although case-by-case modifications may still be required.

- Section 206.102 (c); 62 F. R. 3745-3746

- (4) *The MMS requests comments on each of the following and any other related issues that a party may want to address:*
- *Use of market indicators (indices) to determine royalty value under paragraph (c)(2),*
 - *Use of NYMEX as the index value, and possible alternatives, and*
 - *Selection of the proper prompt month.*

Comment:

As stated throughout, BP believes the best indicator of market value is the gross proceeds received in arms-length sales; however, if the MMS refuses to value royalties based on gross proceeds from arms-length sales, then BP believes an alternate royalty valuation methodology, which at times may approximate the market value of the oil, could be developed using NYMEX-quoted prices and ANS spot prices as indicators of market value. Values based on an index pricing method, however, could vastly over or under value production sold in locations far from market centers or production that is significantly different in quality from index or market center crude oils. In order to reflect true market prices, the value of these crude oils would require case-by-case reviews and adjustments by the MMS.

If NYMEX or ANS quotes are used to assign royalty values for a particular production month, then BP would recommend using the NYMEX or ANS quotes where the prompt month is for delivery during the production month. For example, to value production for the month of September, you would use the NYMEX quotes for September delivery which is prompt from approximately July 21 through August 20. This is when deliveries for September production are actually traded and is, therefore, a better reflection of the values that lessees receive for their September production. Accordingly, based on this change in the prompt month, the example in Appendix B of the Notice would apply for October production, not September. In some cases, such as Alaskan crude oil, the oil is delivered in a month different from the month of production, e.g., ANS delivered to the Gulf Coast or Caribbean can be in transit from the lease for over 50 days. Crude valuation in cases of long transit time will differ from that of crude oils where the lease and market are in close proximity. The MMS should address those situations on a case-by-case basis.

- (5) *The MMS requests comments on each of the following and any other related issues that a party may want to address:*
- *Use of a different market indicator for California and Alaska than the for rest of the country,*
 - *Use of ANS spot prices as the indicator of oil market value, and*
 - *Possible alternative market indicators for California and Alaska.*

Comment:

If the MMS chooses to disregard gross proceeds received in arm's length sales for the valuation of California and Alaskan crude oil, the use of published ANS spot prices as a marker crude for the valuation of Alaskan production is the preferred, although less desirable, alternative. We would caution the MMS, however, not to make the mistake of thinking that, having made its choice, the issue of marker crude indicators

is resolved. At the present time, the ANS spot market on the U.S. west coast provides regular and reliable quotes for valuing ANS production; however, the potential exists for ANS liquidity to decline in the future because of declining North Slope production. Markets are continually changing, and marker crude oils must be continually monitored to evaluate their appropriateness.

BP is not commenting on the applicability of ANS spot quotes in the valuation of California production inasmuch as BP is not an active participant in the purchase and sale of California crude oil.

We wish to point out an error that appears in the example in Appendix C of the Notice. Because ANS is a water-borne cargo crude, not subject to pipeline scheduling requirements, the prompt month for ANS is based on the prior calendar month's quotes. As a result, October was the ANS spot delivery month in industry publications (such as Platt's) from September 1 to September 30.

- (6) *Proposed paragraph (c)(4) states that MMS periodically would publish in the Federal Register a listing of MMS approved publications for determining the appropriate NYMEX or ANS prices. The MMS requests comments on specific publications that should be approved for use in applying these rules. The criteria MMS would consider in determining acceptability would include, but not be limited to whether the publications:*
- *Are frequently used by buyers and sellers,*
 - *Are frequently referenced in purchase or sales contracts,*
 - *Use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS crude oil, and*
 - *Are independent from MMS or other lessors and lessees.*

Comments:

The foregoing criteria proposed by the MMS would need to be applied on a grade-specific basis. For example, an approved publication may satisfy the criteria and be used for one or more specific grades of crude oil but not for others.

BP would recommend that the following publications be considered for approval: Platt's, Reuters, Telerate, Petroleum Argus and Bloomberg.

- (7) *In addition to comments on the index based valuation procedures, the MMS requests specific comments on alternative valuation techniques based on local market indicators.*
- *The MMS believes that today's oil marketing is driven largely by the NYMEX market.*
 - *The proposed rules should promote certainty for all involved.*
 - *The MMS requests suggestions on ways to value federal oil production based on market indicators in the vicinity of the leases with the following in mind:*
 - + *The method should not rely on posted prices unless they account for the difference between postings and market value.*
 - + *The methods must account for value differences related to quality and location.*
 - + *The methods must be widely applicable and flexible enough to apply nationwide.*
 - + *Most importantly, the methods must reflect the general concepts of fair market value--the agreed-upon cash price between willing and knowledgeable buyers and sellers if neither were under undue pressure.*

Comment:

The index pricing method proposed by the MMS would provide lessees and RIK purchasers certainty; however, certainty would be achieved at the expense of accuracy. To accurately and fairly implement the index pricing method, MMS must have the ability and resources to adjust on a case-by-case basis lessee's crude oil values based on the index pricing method to reflect market value. In particular, adjustments would be needed for production sold at a great distance from market centers or of significantly different quality from index or market center crude oils.

- Section 206.102 (h); 62 F. R. 3746

(8) *MMS proposes to delete paragraph (h), which says royalty value shall not be less than the lessee's gross proceeds, less applicable allowances. The MMS requests specific comments on deletion of paragraph (h).*

Comment:

If the MMS adopts an index pricing method for the valuation of federal royalty oil, BP strongly agrees with the deletion of this paragraph. In most instances, an index pricing method, if administered correctly and allowing case-by-case adjustments to index pricing, should approximate market value over time.

- Section 206.105; 62 F. R. 3747

(9) *In addition to specific comments on the proposed method of adjusting index values, MMS requests suggestions on alternative methods. Alternatives for methods other than location/quality differentials include:*

- *Using index values with no location adjustments*
- *Picking a specific percentage deduction from the index value to generically reflect location differentials.*
- *Developing percentage or absolute dollar deductions for different geographical zones.*

Comment:

BP opposes all of the location/quality adjustment alternatives suggested by the MMS because they do not reflect market value.

There will be situations, both contemplated and otherwise, where the proposed methodology would yield a result that does not reflect market value of the production being disposed. An example is proposed 206.105 (c)(2)(ii) where production is delivered from a lease to an alternate disposal site and value is assigned on the basis of the nearest market center, which may be many miles away and of significantly different quality. We suggest that such situations be handled on a case-by-case basis.

- Section 206.105 (c)(8); 62 F. R. 3749

(10) *The MMS requests specific comments on the initial list of market centers and aggregation points, including suggested additions, deletions and other modifications. The MMS will*

consider the following factors and conditions in specifying market centers and aggregation points:

- *Points where MMS-approved publications publish prices useful for index purposes;*
- *Markets served;*
- *Pipelines and other transportation linkage;*
- *Input from industry and others knowledgeable in crude oil marketing and transportation;*
- *Simplification; and*
- *Other relevant matters.*

Comment:

Aggregation centers applicable to the transport and marketing of Alaskan crude oil will need to be added to Appendix H.

- Section 206.105 (d)(3); 62 F. R. 3749

(11) *The MMS requests comments on Proposed Form MMS-4415, Oil Location Differential Report including:*

- *Its layout and information requested,*
- *Frequency and timing of submittal,*
- *Frequency and timing of MMS's calculations and publication of differentials, and*
- *All other relevant comments.*

Comment:

BP has numerous concerns about proposed Form MMS-4415. We believe the MMS (i) does not understand the commercial sensitivity of the data requested, (ii) does not understand the valuation problems caused by using outdated quality/location differentials, (iii) does not realize the complexity of the data requested, (iv) has requested data which will often be difficult to gather, (v) has provided written instructions which are at times ambiguous and incomplete, and (vi) has not provided the lessees with sufficient assurances that the differentials developed from the data submitted will be accurate.

The data that would be reported by a lessee on Form MMS-4415 potentially would be of a highly sensitive commercial nature. Accordingly, all such reported data would need to be maintained by the MMS as confidential information and should only be disclosed in an aggregated manner and on a time delayed basis (at minimum a 12 month delay). Any review of the base data by personnel outside the MMS should be done on an extended time-delayed basis (24 months or longer) when the data assumes limited commercial significance.

BP believes that using differentials derived annually on the basis of year-old data for royalty valuation is insufficient to reflect market volatility, seasonality or potential quality changes in crude production and would therefore not be an accurate indicator of market value. Instead, BP would recommend that the MMS actualize royalty payments on a delayed 12-month rolling basis. For example, the lessee would file an initial value based on its estimate of the appropriate location/quality adjustments. MMS would provide the lessee the Form MMS-4415 based location/quality adjustment 12 months later. This method would, however, require monthly

reporting by lessees on Form MMS-4415. The advantages of this approach are that the MMS would have all the necessary information to calculate the location/quality adjustments on a timely basis, everyone would have greater confidence that the proposed methodology provides royalty valuations that accurately reflect market conditions and value at the time production is disposed, and the lessees' commercially confidential data disclosed on Form MMS-4415 would be protected.

In cases where differentials in exchange agreements are determined by formula-based pricing methods, the MMS may want to request that both the formula and resulting differential be reported. Formulas used to determine differentials can often be very complex, using such things as numerous data sources and floor/ceiling clauses. Misinterpretations by the MMS of the terms of the formulas could result in meaningless calculated differentials. Errors of this type would be reflected in the quality/location differentials used in the index pricing method, resulting in crude oil valuations not reflective of market value.

Proposed Form MMS-4415 could be vastly simplified and still be used to collect pertinent data. For example, collection of data on the cost of transporting crude oil from the lease to title transfer point is a burdensome request, requiring the collection of data at a micro-level which is not currently available in many companies' financial or managerial accounting systems. The information, once collected and aggregated from numerous lessee submissions, would be meaningless data because lessees will calculate the costs using different methods (e.g., financial costs, costs based on MMS royalty rules, costs with or without overhead and administrative expenses, etc.). This data offers little information relevant to the index pricing method and is unnecessary. Additionally, simplicity can be achieved in the crude quality data request line on the form. For many crude oils, this request can be answered with a non-numeric response of "standard stream quality", instead of the cumbersome requirement of providing, what may be at times, imprecise gravity and sulfur levels. Finally, the MMS lease number for oil received should be deleted inasmuch as it is not a commonly known number to the crude oil purchaser.

There is apparent ambiguity and conflict between proposed regulation 206.105 (d)(3) and the instructions to Form MMS-4415 in Appendix A to the Notice. Proposed 206.105 (d)(3) requires the reporting of information on Form MMS-4415 related to all exchanges involving a lessee's and its affiliates' "crude oil production, and not just information related to Federal lease production". However, the instructions to Form MMS-4415 state, "This form's purpose is to collect value differential data for exchanged oil, whether the exchange takes place at the lease or downstream of the lease." The instructions to Form MMS-4415 appear to cover a broader population of exchanges. Form MMS-4415 indicates that the lessee must report on all exchanges in which it or its affiliates enter. Proposed 206.105 (d)(3) indicates that the exchange populations on which the lessee must report is limited to only those exchanges involving crude oil produced by the lessee or its affiliates. Collection of data on exchanges involving produced oil would be a manageable exercise and would provide the MMS with data relevant to the proposed index pricing method. Collection of data on exchanges involving both produced and purchased oil would require great effort by the lessee and would produce a large volume of data which would never be used in the proposed index pricing method. Accordingly, BP recommends that proposed 206.105 (d)(3) and the instructions to Form MMS-4415 be

modified to require the reporting of exchanges by a lessee or its affiliates only insofar as they relate to the disposition of the lessee's or its affiliates' crude oil production.

Additional ambiguities in the instructions involve the relevant reporting time periods and the volume terms. In proposed 206.105 (d)(3), it is unclear what time periods of production would be covered by Form MMS-4415, both initially and by October 31 of each year the regulations are in effect. For example, it is not clear whether a lessee would be required to report production that occurred during the prior calendar year or during some other 12 month period and, if the latter is the case, what 12 month period should be reported. Likewise, the form's volume term request is unclear. It does not indicate whether the contractual volume or delivered volume should be reported. These volumes can vary significantly due to operational considerations at the time of delivery. BP recommends that contractual volume be provided, inasmuch as contractual volumes are the basis of the terms that determine the market price and differentials.

Finally, we are concerned that the proposed rules are silent as to what would happen with the data once the MMS collects it through Form MMS-4415. There are no provisions describing how the MMS intends to process the data to assure accuracy and completeness. If the data is either reported incorrectly or incompletely by the lessee, or if the data is inaccurately processed by the MMS, the resulting differentials, which are key components of the index pricing method, will be incorrect.

- Procedural Matters - Paperwork Reduction Act

- (12) *As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden.*

In compliance with the requirement of section 3506(c)(2)(A) of the Paper Reduction Act of 1995, MMS is providing notice and otherwise consulting with members of the public and affected agencies concerning collection of information in order to solicit comment to:

- *evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;*
- *evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;*
- *enhance the quality, utility, and clarity of the information to be collected; and*
- *minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.*

Comment:

In addition to BP's comments in item 11 above, BP believes that the MMS' estimate of 15 minutes per report to extract data from individual exchange agreements is underestimated and hence the estimated total burden on industry is understated. BP estimates that it might take 15 minutes to fill out each form but that in addition it might require many multiples of this to identify and collect all applicable exchange agreements and to extract the necessary information and do the required calculations. BP currently estimates that it enters into some 200 exchanges annually involving oil it

or its affiliates produce from leases in the United States that might be subject to this new reporting requirement.

BP is equally concerned about the burden that collecting and processing data reported on Form MMS-4415 would impose on the MMS and the fact that the MMS appears to have ignored this burden. We believe this task would be immense and that the MMS would need to allocate substantial resources and manpower to this effort if the resulting differentials are to reflect the market place.

BP opposes the MMS' suggestion to adopt an Interim Final Rule while it further evaluates its proposed methodology. BP believes that the proposed rule requires further analysis before it is implemented and that it would be inappropriate for the MMS to publish an Interim Final Rule. BP would object to the additional costs and administrative burden that would likely result from changing the rules again when the interim rules are discarded and final rules are adopted.

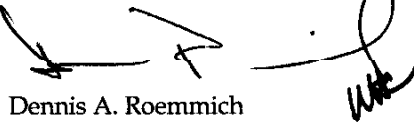
BP would support all efforts to enable electronic filing of Form MMS-4415 as an optional filing method.

(BP is also submitting, under separate cover, its comments in relation to items 11 and 12 to the Office of Management and Budget pursuant to section 3507 (d) of the Paperwork Reduction Act.)

BP's comments to the Notice are intended to be constructive and helpful to the MMS in developing a final rule that strikes an equitable balance among the interests of all parties, and we trust that this will be the spirit in which our comments are received and considered by the MMS. For all of the reasons stated, we do not believe that the proposed rule strikes such a balance and we would recommend that it be substantially reworked or withdrawn in favor of the current regulations. BP representatives are available to clarify or provide further elaboration with regard to any of our comments should the MMS so desire.

Respectfully submitted,

BP EXPLORATION & OIL INC

A handwritten signature in black ink, appearing to read 'D. Roemmich', is written over a horizontal line.

Dennis A. Roemmich
Vice-President
Business Development and Administration